

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-302-E - ORDER NO. 2003-638
OCTOBER 23, 2003

IN RE: Application of Duke Energy Corporation for) ORDER
Authorization Under Article 13, Chapter 27 of) APPROVING
Title 58 of the Code of Laws of South) APPLICATION
Carolina, 1976, to Extend Termination Date)
of Credit Agreement.)

Duke Energy Corporation (the "Company") filed an application dated October 8, 2003 (the "Application") for authority for extension of the term of an existing credit agreement by one year, to September 16, 2005, in the manner described in the Application. Based on the verified Application and the Commission's entire files and records in this matter, the Commission now makes the following:

FINDINGS OF FACT

1. The Company is a corporation duly organized and existing under the laws of the State of North Carolina. It is duly authorized by its Articles of Incorporation to engage in the business of generating, transmitting, distributing and selling electric power and energy. It is duly domesticated in the State of South Carolina and is authorized to conduct and carry on business in this State and is conducting and carrying on the businesses above mentioned in each of said States. It is a public utility under the laws of this State, and its operations in this State are subject to the jurisdiction of this Commission. It is also a public utility under the laws of the State of North Carolina, and its operations in that State are subject to the jurisdiction of the North Carolina Utilities

Commission. It is a public utility under the Federal Power Act, and certain of its operations are subject to the jurisdiction of the Federal Energy Regulatory Commission. In addition, the Company, through its subsidiaries and affiliates, engages in a broad range of energy and energy-related businesses worldwide.

2. As described in the Application, effective September 16, 2003, the Company entered into a Credit Agreement with Merrill Lynch Capital Corp., as Lender. A copy of the Agreement is attached as an exhibit to the Application. The Agreement is a revolving credit facility which allows the Company to borrow from the Lender up to \$150,000,000 from time to time through September 16, 2004. As described in Section 1(b) of the Agreement, the Company may request from the Lender a term loan with a maturity of up to one year following the termination date, in an amount up to \$150,000,000. The term loan request may be made only on the termination date of the Agreement, and therefore no borrowing under the Agreement may last longer than one year. The Company is not required to seek the Commission's approval for the Agreement under S.C. Code Section 58-27-1710, because it is exempt from that requirement due to its one-year term. However, Section 1(d) of the Agreement provides that the September 16, 2004, termination date shall be extended automatically and without further action by the parties hereto by an additional one-year period measured from such date, if the Company obtains an appropriate Commission order approving the terms of the Agreement as a two-year revolving credit facility followed by a one-year term loan. As a two-year borrowing facility, the Agreement is subject to the Commission's prior approval under Section 58-27-1710. In negotiating the Agreement, the Company and Merrill

Lynch agreed to a two-year arrangement but further agreed to allow the arrangement to initially have a one-year term, with a second year added to that term if approved by the Commission. The Company therefore filed the Application to seek the Commission's authority to allow the Agreement to provide for borrowings for up to two years from its execution date. If the Agreement is extended through September 16, 2005, upon Commission approval, the one-year term loan described above will be available beginning on that date.

The approval of the Commission requested in this Application is a condition to extension of the termination date for the Agreement. Borrowings will not be available after September 16, 2004, under the Agreement until the Commission grants its authority as described in Section 1(d) of the Agreement.

The Company will pay interest on loans taken under the Agreement in accordance with Section 1(g) of the Agreement. As described in that section, interest is payable at a Base Rate or a Euro-Dollar Rate, as specified by the Company in a borrowing request. As described in Section 1(g) and other parts of the Agreement, certain provisions of the Agreement are established by reference to an existing three-year credit agreement, which was authorized by the Commission in Docket No. 2001-328-E.

3. As described in the Application, the Company will pay certain fees, including attorneys' fees, in connection with the negotiation or consummation of the Agreement or borrowings under the Agreement. The Company asserts that such fees are the result of arm's length negotiations with the Lender under the Agreement and are comparable to fees payable in similar transactions in the marketplace.

4. The Company intends to use proceeds from sales of commercial paper backed by the Agreement, and from borrowings under the Agreement, to (a) purchase or redeem the Company's outstanding higher cost securities as provided in the Application, (b) refund maturing securities, (c) finance the Company's ongoing electric plant construction (including the acquisition of nuclear fuel), and (d) working capital requirements. None of the proceeds from the issuances or borrowings will be used to assume, refinance, refund, or redeem any securities or other debt obligations of any of the Company's subsidiaries.

CONCLUSIONS

Upon review and study of the Application, its supporting data and other information in the Commission's files, the Commission is of the opinion, and so finds, that the Company is a public utility subject to the jurisdiction of this Commission with respect to its rates, service, and securities issues and that the entry into and extension of the term of the Agreement, as set forth in the Company's Application, are

- a) For lawful objects within the corporate purposes of the Company;
- b) Compatible with the public interest;
- c) Necessary and appropriate for and consistent with the proper performance by the Company of its service to the public and will not impair its ability to perform that service; and
- d) Reasonably necessary and appropriate for such purposes.

When borrowings under the Agreement, or net proceeds from the sales of commercial paper backed by the Agreement, are applied and used by the Company to purchase or redeem certain of the Company's outstanding unmatured securities, such borrowings or

sales will be made from time to time when market conditions will permit them on terms which would result in a lower cost of money to the Company.

IT IS THEREFORE ORDERED:

1. That the Company's entry into and performance of its obligations under the Agreement dated September 16, 2003, with Merrill Lynch Capital Corp., with a termination date of September 16, 2005, and a one-year term available beginning on the termination date, in the manner set forth in the Application, is authorized and approved by this Commission; and

2. That the Company's use of the proceeds of borrowings under the Agreement and commercial paper backed by the Agreement, as described in the Application, is authorized and approved by this Commission.

IT IS FURTHER ORDERED THAT:

1. The Company file a written report to the Commission within thirty (30) days after any borrowing under the Agreement as herein approved. The report shall contain as a minimum the following data:

- a. Date of borrowing;
- b. Principal amount borrowed;
- c. Stated interest rate;
- d. The specific use(s) of the proceeds; and
- e. The docket number of the Order authorizing the borrowing.

2. This proceeding shall be and is continued on the docket of the Commission, without delay, for the purpose of receiving the report as hereinabove


provided. Further, the Commission's approval in this docket does not restrict the Commission's right to review and, if deemed appropriate, adjust the Company's cost of capital for ratemaking purposes for the effect of borrowings under the Agreement.

3. Approval of this Application does not bind the Commission as to the ratemaking treatment of the contemplated borrowings.

4. This Order shall not, in any way, affect or limit the right, duty, or jurisdiction of the Commission to further investigate and order revisions, modifications, or changes with respect to any provision of this Order in accordance with the law.

5. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Mignon L. Clyburn
Chairman

ATTEST:



Bruce F. Duke
Acting Executive Director

(SEAL)